



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534

January 11, 2008

Marilyn and Alan Howard  
4698 New Bushy Branch Road  
Manchester, Tennessee 37355

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7099 3400 0014 0970 5145**

Subject: DIRECTOR'S ORDER NO. WPC07-0254  
WATERFORD FARMS SUBDIVISION  
COFFEE COUNTY, TENNESSEE

Dear Mr. and Mrs. Howard:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Vojin Janjic, Manager  
Enforcement and Compliance Section

VMJ:BPB

cc: DWPC – EFO-Columbia  
DWPC – Compliance File  
OGC

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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**IN THE MATTER OF:**

**MARILYN AND ALAN HOWARD**

**RESPONDENTS**

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**DIVISION OF WATER  
POLLUTION CONTROL**

**CASE NUMBER WPC 07-0254**

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**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

**II.**

Marilyn and Alan Howard (hereinafter the "Respondents") are the owners/developers of Waterford Farms, a subdivision located on McCormick Lane in Coffee County (hereinafter the "site") and are residents of the state of Tennessee. Service of process may be made on the Respondents at 4698 New Bushy Branch Road, Manchester, Tennessee 37355.

## **JURISDICTION**

### **III.**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

### **IV.**

The Respondents are “persons” as defined by T.C.A. §69-3-103(20) and as herein described, the Respondents have violated the Act.

### **V.**

Tennessee Code Annotated §69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (TNCGP) may be obtained by submittal of a Notice of Intent (NOI). Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to

engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## **VI.**

Crumpton Creek is “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, livestock watering and wildlife and irrigation.

## **FACTS**

## **VII.**

On September 21, 2007, division personnel from the Columbia Environmental Field Office (CL-EFO) conducted a complaint investigation at the site and noted that an unauthorized rock impoundment had been constructed across Crumpton Creek. A portion of the impounded water was being pumped into a separate pond which then overflowed into a secondary pond, both at different locations at the site. The division also noted construction activity had occurred at the site with land clearing in excess of one acre.

## **VIII.**

On September 25, 2007, the division issued a Notice of Violation (NOV) to the Respondents for performing the unauthorized impoundment to Crumpton Creek, pumping water out of the impounded area of the creek to another location, and conducting unpermitted construction activity, which was observed during the September 21, 2007, complaint investigation. The NOV instructed the Respondents to immediately remove the rock impoundment from Crumpton Creek and to discontinue pumping water out of the creek to another location. The Respondents were informed these activities required authorization under an ARAP. A subsequent file review determined that the Respondents had not requested or received written authorization for an ARAP. The Respondents were further informed that authorization under the TNCGP was required prior to any construction activity with land clearing in excess of one acre. Therefore, if the Respondents were expecting to conduct any further construction activity, coverage under the TNCGP would first be required before commencing any further activities. The file review further determined that the Respondents had not requested or been issued coverage under the TNCGP.

## **IX.**

On September 28, 2007, the Respondents contacted the division to discuss the violations cited in the NOV. The Respondents told the division that construction activity had started before the Respondents purchased the land; therefore the Respondents were not required to obtain permit coverage. The division informed the Respondents that, as the new owners/developers of the site, they were required to obtain written authorization under an ARAP if water was to continue to be pumped out of the creek into a separate location, and coverage under the TNCGP if further construction activities were to occur. Otherwise, if all construction activities had been

completed at the site, all land disturbances needed to be stabilized immediately. The Respondents were further instructed to immediately remove the unauthorized impoundment of Crumpton Creek.

#### **X.**

On October 16, 2007, division personnel conducted a compliance inspection at the site and noted that the Respondents had not implemented any corrections as instructed by the division in the NOV issued September 25, 2007, and verbally, on September 28, 2007. The rock impoundment had not been removed from Crumpton Creek and water continued to be pumped out of the impounded area into a pond at a different location through a manmade waterfall.

#### **XI.**

On October 17, 2007, the division issued a second NOV to the Respondents for the unauthorized impoundment of Crumpton Creek and pumping water out of the impounded area of the creek to another location, as observed during the September 21, 2007, complaint investigation and during the October 16, 2007, compliance inspection. The Respondents were again notified that these activities are in direct violation of the Act.

#### **XII.**

On December 13, 2007, division personnel conducted a compliance inspection at the site and noted the Respondents had removed the rock impoundment from Crumpton Creek. The division also observed that the piping leading from the originally impounded area of the creek to a separate pond had been removed and a new well had been installed to supply water to both of the ponds. Sod had been laid on a majority of the developed areas, but a new house was in the

process of being built. To date, the division has not received an application for coverage under the TNCGP from the Respondents.

### **XIII.**

During the course of investigating the Respondents' activities, the division incurred damages in the amount of EIGHT HUNDRED FIFTY FOUR DOLLARS AND TWENTY CENTS (854.20).

### **VIOLATIONS**

#### **XIV.**

By altering waters of the state without authorization under an ARAP, and by performing construction activities without coverage under the TNCGP, the Respondent has violated T.C.A. §§69-3-108(a)–(b), 114(b), which state in part:

§69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

## XV.

By causing a condition of pollution to Crumpton Creek, the Respondent has violated T.C.A.

§69-3-114(a).

§69-3-114(a) states, in part:

It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.



## **ORDER AND ASSESSMENT**

### **XVI.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents.

1. The Respondents shall, within 15 days of receipt of this ORDER, submit to the CL-EFO at 2484 Park Plus Drive, Columbia, Tennessee 38401, a NOI to obtain coverage under the TNCGP for the areas of the site affected by unpermitted land disturbance activities. The NOI shall be accompanied by a site-specific SWPPP and the appropriate permit fee. If the division finds the submission incomplete or otherwise unacceptable, the Respondents shall, within 30 days of receipt of such notification, make suggested revisions and modifications as directed by the division and resubmit the corrected NOI and/or SWPPP for review and approval. If no additional land disturbance activities are planned to occur at the site, then the Respondents shall submit a signed written statement to that effect in lieu of a NOI, SWPPP, and appropriate fee.
2. The Respondents shall immediately establish and maintain effective EPSC measures on-site, such that no additional sediment is allowed to enter waters of the state.
3. The Respondents shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
4. The Respondents shall, within 14 days of receipt of this ORDER, submit written documentation and photographic evidence indicating that appropriate EPSC measures are in place. The Respondents shall submit this written documentation and photographic

evidence to the Water Pollution Control manager in the CL-EFO at the address listed in item 1, above.

5. The Respondents shall pay a CIVIL PENALTY of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00) to the division, hereby ASSESSED to be paid as follows:

- a. The Respondents shall, within 30 days of receipt of this ORDER, pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00).
- b. If the Respondents fail to comply with Part XVI, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$3,750.00), payable within 30 days of default.
- c. If the Respondents fail to comply with Part XVI, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$3,750.00), payable within 30 days of default.
- d. If the Respondents fail to comply with Part XVI, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$3,750.00), payable within 30 days of default.
- e. If the Respondents fail to comply with Part XVI, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$3,750.00), payable within 30 days of default.

6. The Respondents shall pay DAMAGES to the division in the amount of EIGHT HUNDRED FIFTY FOUR DOLLARS AND TWENTY CENTS (854.20).

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the commissioner of the Tennessee Department of Environment and Conservation on this 11<sup>th</sup> day of January 2008.

  
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Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

## **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109, 115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 et seq of the Uniform Administrative Procedures Act, and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of

Tennessee,” and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution and Control, Tennessee Department of Environment and Conservation, 6<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243. Please write your case number on all payments and all correspondence concerning this matter.